

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JANE BEST-SIMPSON,

Plaintiff, :

-v-

NEW YORK ORGAN DONOR NETWORK et
al.,

Defendants. :

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BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

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07 CV 2683 (BSJ) (AJP)

ORDER

COPY MAILED / FAXED TO:

COUNSEL FOR PLAINTIFF(S): _____

COUNSEL FOR DEFENDANT(S): Faxed

PLAINTIFF PRO SE: cat8 reg mail

DEFENDANT PRO SE: _____

DATE: 1/24/08

Sig: YKL

At a conference before this Court on January 11, 2008,

Plaintiff agreed to a voluntary dismissal without prejudice of the above-captioned action, effective January 11, 2008, pursuant to the following terms, stipulated to by all parties:

1. Plaintiff dismisses the above-captioned action without prejudice;
2. All applicable statutes of limitations are tolled until July 11, 2008;
3. If Plaintiff refiles the above-captioned action on or before July 11, 2008, Plaintiff shall not be required to re-serve any defendant, and counsel shall accept service for their respective Defendants;

4. All outstanding motions are withdrawn; all Defendants' pending motions for sanctions are withdrawn with prejudice;

At this hearing, the Court also advised Plaintiff that her belief that she would be responsible for Defendants' attorneys fees in order to refile this action was in error. Additionally, the Court noted that while Plaintiff would be responsible for the filing fee upon refiling, that the fee would be waived if she qualified for in forma pauperis status.

Subsequent to the hearing in which the case was voluntarily dismissed, Plaintiff has submitted several letters to the Court. First, the Court has considered Plaintiff's January 15, 2008 letter to the Court. The above terms, as stated, reflect what was assented to by all parties at the hearing, and the Court has taken into account the Plaintiff's objections to the proposed order submitted by Defendant New York Organ Donor Network ("NYODN"). With respect to the medical records subpoenaed by the Defendants, the Court notes that no protective order was issued in conjunction with the subpoenas. Accordingly, the Court directs Defendants to keep confidential all subpoenaed records.

Finally, the Court notes Plaintiff's assertion in her January 22, 2008 letter that NYODN's counsel has improperly

engaged in ex parte communications with this Court; the Court has reviewed its records and finds no evidence of any such communications. Although Plaintiff asserts that she "will not withdraw this case until this information has been presented, a fact finding hearing has been held and it is determined what the impact of this information should have on the case and all of the individual parties associated with this matter," Plaintiff's withdrawal of this case was effective as of the date of the hearing pursuant to the agreement of all the parties on the record. See, e.g., Powell v. Omnicom, 497 F.3d 124, 129 (2d Cir. 2007) ("[A] voluntary, clear, explicit, and unqualified stipulation of dismissal entered into by the parties in court and on the record is enforceable even if the agreement is never reduced to writing, signed, or filed." (internal quotations omitted)).

Thus, this case is DISMISSED without prejudice, effective January 11, 2008. All applicable statutes of limitations are tolled until July 11, 2008. If Plaintiff re-files the case on or before that date, re-service shall not be required, and Defendants' counsel shall accept service on their behalf. Defendants shall withdraw all outstanding motions, including all sanctions motions, with respect to the above-captioned case. The Clerk of Court is directed to close this case.

SO ORDERED:

Barbara S. Jones
BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
January 24, 2008